

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 9/21/10
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE LOWER MANHATTAN DISASTER :  
SITE LITIGATION :
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WALTER O'DONNELL,

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

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ALVIN K. HELLERSTEIN, U.S.D.J.:

**ORDER SUA SPONTE**  
**DISMISSING CHECK-OFF**  
**COMPLAINT WITHOUT**  
**PREJUDICE**

21 MC 100 (AKH)

10 Civ. 6824

Plaintiff Walter O'Donnell filed a "Check-Off ('Short Form') Complaint" as a new action, naming one defendant, City of New York. Plaintiff claims authority to use this check-off complaint under my Order of June 22, 2006, and styles his complaint to incorporate a form Amended Master Complaint filed August 18, 2006.

Plaintiff alleges that he was employed by Tully Construction and worked at the World Trade Center site between September 14, 2001, and January 2004, breathing "noxious fumes" and ingesting "toxic substances" throughout. This exposure allegedly caused him to incur chronic obstructive pulmonary disease and silicosis, with both manifesting on and after September 15, 2008. Plaintiff further alleges that § 408(b)(3) of the Air Transportation Safety and System Stabilization Act ("ATSSSA"), 49 U.S.C. § 40101 note, confers jurisdiction on this Court.


In drafting his complaint, plaintiff is not entitled to rely on case management orders issued well before he became a party. Moreover, plaintiff's

allegations are so conclusory as to make a responsive pleading by the City impossible without undue labor and expense. The complaint fails to show how and why plaintiff's performance of twenty-eight months of unspecified work for Tully Construction relates in any way to the City of New York, or how his cause of action confers jurisdiction on this Court as an action that arises from or relates to the terrorist-related aircraft crashes of September 11, 2001. See ATSSSA § 408(b)(3) (stating that federal jurisdiction exists only where the claim arises from or relates to the crashes).

The complaint is dismissed. Plaintiff has until October 10, 2010, to re-plead a complaint that conforms to Rule 8 of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated: September 20, 2010  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge